

**IN THE COURT OF APPEALS OF IOWA**

No. 0-828 / 10-1547  
Filed November 24, 2010

**IN THE INTEREST OF E.B. and A.B.,  
Minor Children,**

**E.B., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Muscatine County, Gary P. Strausser, District Associate Judge.

A mother appeals from a juvenile court order terminating her parental rights to two children. **AFFIRMED.**

Jeffrey L. Powell of Tindal Law Office, P.L.C., Washington, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Gary Allison, County Attorney, and Korie L. Shippee, Assistant County Attorney, for appellee.

John Black, Iowa City, attorney and guardian ad litem for minor children.

Considered by Mansfield, P.J., and Danilson and Tabor, JJ.

**TABOR, J.**

A mother whose children, E.B. and A.B., have been removed from her care three times because she tested positive for cocaine appeals a juvenile court order terminating her parental rights over both children. She contends the Department of Human Services failed to make reasonable efforts to reunify her with her children and that termination is not in the children's best interest as they share a bond with her. Because the mother failed to preserve the reasonable-efforts issue for review, and because we conclude that termination is in the children's best interests, we affirm the juvenile court's termination order.

**I. Background Facts and Proceedings**

The family came to the attention of the Iowa Department of Human Services (DHS) in November of 2007, when A.B tested positive for cocaine at birth. In March of 2008 the older child, E.B., tested positive for cocaine as well. The DHS filed a child-in-need-of-assistance (CINA) petition and on June 23, 2008, the juvenile court adjudicated both A.B and E.B. as CINA on the basis that their mother's use of controlled substances made it imminently likely they would not receive adequate care. The DHS established services to assist the family, including substance abuse evaluation and treatment, random drug testing, therapy, protective supervision, and additional services through Family Resources. The mother attended drug treatment sporadically and did not regularly attend meetings with the DHS.

On August 11, 2008, the mother tested positive for cocaine and both children were, consequently, removed from her care and placed in foster care.

Thereafter, the mother completed a new substance abuse evaluation and a plan to assist reunification was established, which included inpatient substance-abuse treatment at a residential treatment center. She relapsed while there and drank alcohol but was allowed to stay because she admitted to drinking. The children were returned to her care on August 29, 2008, and she successfully completed treatment in December of 2008.

In January of 2009, the mother missed several drug screens, provided a diluted sample, and took her children to Chicago in contravention of a court order precluding her from leaving the state with the children. She advised the Department she used cocaine on February 14, 2009, and the children were removed from her care for a second time on February 18, 2009, and again placed in foster care.

In March 2009, the mother tested positive for cocaine when she was seen in the emergency room. However, the district court found that in April and May of 2009, she started to make progress toward managing her substance abuse. She completed outpatient substance abuse treatment, attended visitation, and earned a reduction in the level of supervision required. She complied with random drug testing throughout the spring and summer of 2009 and all tests were negative for controlled substances; however, she was arrested for public intoxication in May 2009. At a review hearing held in October 2009, the Department recommended that the children be returned to their mother's custody if she provided a clean hair stat drug test. The results of the hair stat were negative and the children were again returned to their mother's custody on October 26, 2009. The court ordered

the mother to participate in Alcoholics Anonymous, Narcotics Anonymous, or a similar support system, and to complete random drug tests at least two times per month.

By January 2010, the mother had failed to submit to several court-ordered drug tests, tested positive for cocaine in a test to which she did submit on December 15, and showed signs of avoiding DHS caseworkers. On January 11, 2010, the mother tested positive for cocaine and on January 13, 2010, the DHS removed the children from their mother's care for the third time. From February through May the mother failed to provide drug screens. In May, the mother completed a new substance abuse evaluation and treatment was recommended.

On June 14, 2010, she gave birth to her third child, who tested positive for cocaine and marijuana at birth. The child was removed from the mother's care and placed in DHS custody. Later that month, the mother tested positive for marijuana in two of three drug tests. The mother completed a new substance abuse evaluation in June and inpatient treatment was recommended. The mother submitted to several drug tests in July of 2010, one of which was positive for cocaine. She testified that she intends to once again attend and complete inpatient treatment.

A petition for termination was filed on May 19, 2010, and on September 8, 2010, the juvenile court concluded that clear and convincing evidence supported termination of the parent-child relationship between the mother and her two

children, E.B. and A.B, pursuant to sections 232.116(1)(f),<sup>1</sup> (h),<sup>2</sup> and (l).<sup>3</sup> The court noted E.B. is a child age four or older and has been removed from her mother's custody for twelve of the last eighteen months. A.B. is a child age three or younger and has been removed from the home for six consecutive months and six of the last twelve months, and both children have been adjudicated in need of assistance. The court concluded that neither child could be returned to the mother's custody at the present time because her "severe, chronic substance abuse problem" and her failure to make any progress despite "more than two and a half years" of adequate reunification services precluded her from providing the

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<sup>1</sup> Section 232.116(1)(f) provides that the court may terminate parental rights if all of the following have occurred:

1. The child is four years of age or older.
2. The child has been adjudicated a child in need of assistance . . . .
3. The child has been removed from the physical custody of the child's parents for at least twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.
4. There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

<sup>2</sup> Section 232.116(1)(h) provides that the court may terminate parental rights if all of the following have occurred:

1. The child is three years of age or younger.
2. The child has been adjudicated a child in need of assistance . . . .
3. The child has been removed from the physical custody of the child's parents for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.

<sup>3</sup> Section 232.116(1)(l) provides that the court may terminate parental rights if all of the following have occurred:

1. The child has been adjudicated a child in need of assistance . . . and custody has been transferred from the child's parents for placement pursuant to 232.102.
2. The parent has a severe, chronic substance abuse problem, and presents danger to self or others as evidenced by prior acts.
3. There is clear and convincing evidence that the parent's prognosis indicates that the child will not be able to be returned to the custody of the parent within a reasonable period of time considering the child's age and need for a permanent home.

children with adequate care. The court found that reasonable efforts had been made to prevent or eliminate the need for removal of the children from the home and noted the mother had attempted both inpatient and outpatient treatment, in addition to other services.

The court reasoned that “despite years of services [the mother] continues to exhibit the same type of behavior that originally brought her and the family to the attention of the department” as evidenced by the fact that the Department became involved in 2007 when A.B. tested positive for cocaine at birth and that three years later, the mother’s new-born again tested positive for cocaine at birth.

The court further explained:

She has made little to no progress regarding her substance abuse and there is no indication she will make progress in the future despite her promises to do so. Her past is a strong indicator of her present and future inability to remain substance free and provide appropriate supervision to the children.

The court further noted that the mother has “continued to use controlled substances even after the petition was filed.”

The court concluded that termination of parental rights is in the children’s best interests. It found that the children would suffer harm, including substance abuse in their presence and the lack of an appropriate degree of supervision if returned to their mother’s care. The court noted that the children need and deserve permanency and that each time the children have been placed with their mother in the community she has relapsed within a relatively short period resulting in removal. The mother appeals the termination of her parental rights.

## **II. Scope and Standard of Review**

We review the juvenile court's decision to terminate parental rights de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010); *In re Z.H.*, 740 N.W.2d 648, 650 (Iowa Ct. App. 2007). We give weight to the juvenile court's factual findings, especially those regarding witness credibility, but we are not bound by them. *In re L.M.W.*, 518 N.W.2d 804, 805 (Iowa Ct. App. 1994).

## **III. Merits**

### **A. Reasonable Efforts toward Reunification**

The mother contends the DHS failed to make reasonable efforts to reunify her with the children and argues the court should have allowed her six additional months to complete her new mental-health and inpatient treatment. She alleges she preserved error by requesting additional services and a six-month continuance at the termination hearing and by filing this appeal. The State argues the mother failed to preserve the issue for appellate review or, in the alternative, that efforts made to reunify the mother with her children were reasonable.

"The State must make reasonable efforts to provide services to a parent before termination proceedings may be instituted." Iowa Code § 232.102(7), 10(a); *In re C.H.*, 652 N.W.2d 144, 147 (Iowa 2002). To preserve error for purposes of appellate review, the parent must request different or additional services prior to the termination proceeding. See *In re C.H.*, 652 N.W.2d at 148 (stating the parent must request services at the proper time or the parent "waives the issue and may not later challenge it at the termination proceeding"); *L.M.W.*,

518 N.W.2d at 807 (indicating a parent must demand services if he or she feels they are inadequate before termination). If a parent wishes to challenge the DHS efforts, alleging the agency failed to discharge its statutory duty to make reasonable efforts to provide the parent with services, the parent must do so at the removal hearing, review hearings, when the case permanency plan is entered, or when the services are offered or denied—it is too late to launch the challenge at the termination hearing. *C.H.*, 652 N.W.2d at 148; *L.M.W.*, 518 N.W.2d at 807. Moreover, “[a] parent must inform the juvenile court of such a challenge” and “voicing complaints regarding the adequacy of services to a social worker is not sufficient.” *C.H.*, 652 N.W.2d at 148.

Because the record reflects that the mother did not challenge the DHS efforts to provide services to her before the termination hearing, we conclude she failed to preserve this issue for review. Moreover, her argument that she preserved error by requesting additional in-patient treatment from Dana Foster of Family Resources is unavailing because we require parents to challenge their services before the juvenile court—“voicing complaints regarding the adequacy of services to a social worker is not sufficient” to preserve error. *Id.* Because the mother did not preserve error, we decline to review the merits of this argument.

#### **B. Best Interests of the Children**

The mother also argues that terminating her parental rights is not in the children’s best interests because they share a bond with her. The State counters that despite the children’s bond with their mother, their best interests are served by terminating the mother’s parental rights.

The State bears the burden of proving grounds for termination under section 232.116(1) by clear and convincing evidence. *Z.H.*, 740 N.W.2d at 650–51. However, even if the State demonstrates termination is appropriate, the court need not terminate if any of the circumstances listed in section 232.116(3) exist. *P.L.*, 778 N.W.2d at 37. Section 232.116(3)(c) provides that the court need not terminate parental rights where “[t]here is clear and convincing evidence that the termination would be detrimental to the child[ren] at the time due to the closeness of the parent-child relationship.” The children’s best interests remain our principal considerations when determining whether to terminate parental rights and we give primary concern to the children’s safety and long-term nurturing, as well as their physical, mental, and emotional conditions and needs. Iowa Code § 232.116(2).

Because the mother has not been able to maintain sobriety despite years of services, which creates an imminent likelihood that her children will not receive adequate care, and because the children need permanency, which has not been established in their mother’s home, we conclude termination is in the children’s best interest and affirm the juvenile court.

We recognize that “a good prediction of the future conduct of a parent is to look at the past conduct.” *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998).

Thus, in considering the impact of a drug addiction, we must consider the treatment history of the parent to gauge the likelihood the parent will be in a position to parent the child in the foreseeable future. Where the parent has been unable to rise above the addiction and experience sustained sobriety in a noncustodial setting, and establish the essential support system to maintain sobriety, there is little hope of success in parenting.

*Id.*

Here, the mother has repeatedly been unable to rise above her drug addiction and sustain sobriety despite inpatient and outpatient treatment, as well as other services. She has relapsed numerous times throughout her treatment, frequently failed to provide drug screens when they were required, and failed to attend Alcoholics Anonymous or Narcotics Anonymous services as directed by the court. Even more concerning, her third child tested positive for cocaine and marijuana at his birth and was removed from her care—this is the exact same conduct that brought the family to the Department’s attention when her second child, A.B., tested positive for cocaine at birth, and led the juvenile court to conclude that the mother “has made absolutely no progress in more than two and a half years.” Moreover, the DHS caseworker, Amy Nelson, who has worked with the family extensively, testified that she did not believe the mother could maintain sobriety anytime in the near future. The mother’s inability to remain sober creates an ongoing risk to her children in the form of inadequate care or future removal from their mother’s home and placement in foster care, neither of which is in the children’s best interests.

Several people who have worked closely with the family testified that terminating the mother’s parental rights is in the children’s best interests despite their bond with their mother. Nelson testified that despite their bond, she believes termination is best for the children explaining, “[t]hey are seven and almost three. They need permanency. They need a forever home. They need a parent that can be clean and sober every day and not for only two months at a

time.” She explained she does not believe the mother can maintain sobriety in the near future and testified that she believes any harm to the children will be greater if parental rights are not terminated than if they are. Likewise, Dana Foster, of Family Resources, who has also provided extensive services to the family, believes termination of parental rights is in the children’s best interests because the mother has not maintained sobriety and her drug use negatively impacts her ability to parent. The guardian ad litem also argued termination is in both children’s best interests.

Although the mother appears to provide adequate care during the times she is sober, it is not in the children’s best interests to remain in her care in the hopes that she is able to maintain sobriety and provide safe and adequate care constantly and reliably. “Children simply cannot wait for responsible parenting. Parenting cannot be turned off and on like a spigot. It must be constant, responsible, and reliable.” *In re T.J.O.*, 527 N.W.2d 417, 422 (Iowa Ct. App. 1994) (citation omitted). The mother’s past and recent conduct gives us no reason to believe that she is now able to parent the children or that she will consistently work toward and maintain sobriety. “The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems.” *In re D.A.*, 506 N.W.2d 478, 479 (Iowa Ct. App. 1993) (citation omitted). Termination is in the children’s best interests.

**AFFIRMED.**